

## **PUBLIC HEALTH COUNCIL**

Meeting of the Public Health Council, Tuesday, August 17, 1999, 10:00 A.M., Massachusetts Department of Public Health, 250 Washington Street, Floor 2, Boston, Massachusetts. Present were: Dr. Howard K. Koh (Chairman), Dr. Clifford Askinazi, Mr. Manthala George Jr., Ms. Shane Kearney Masaschi, Mr. Albert Sherman, Mr. Joseph Sneider, Mr. Bertram Yaffe, and Ms. Janet Slemenda and Dr. Thomas Sterne absent. Also in attendance was Ms. Donna Levin, General Counsel.

\*\*\*\*\*

Chairman Koh announced that notices of the meeting had been filed with the Secretary of the Commonwealth and the Executive Office of Administration and Finance, in accordance with the Massachusetts General Laws, Chapter 30A, Section 11A 1/2.

\*\*\*\*\*

The following members of the staff appeared before the Council to discuss and advise on matters pertaining to their particular interests: Dr. Gregory Connolly, Director, Massachusetts Tobacco Control Program; Attorney Howard Saxner, Deputy General Counsel, Office of the General Counsel; Dr. Paul Dreyer, Director, Division of Health Care Quality; Ms. Joyce James, Director, Mr. Jere Page, Senior Analyst, Ms. Holly Phelps, Consultant Analyst, Determination of Need Program.

### **RECORDS OF THE PUBLIC HEALTH COUNCIL MEETING OF MAY 25, 1999:**

Records of the Public Health Council meeting of May 25, 1999 were presented to the Council. After consideration, upon motion made and duly seconded, it was voted (unanimously): That, records of the Public Health Council Meeting of May 25, 1999, copies of which had been sent to the Council Members for their prior consideration, be approved, in accordance with Massachusetts General Laws, Chapter 30A, Section 11A 1/2.

### **PERSONNEL ACTIONS:**

In a memorandum dated July 14, 1999, Howard K. Koh, Commissioner, Department of Public Health, recommended approval of the appointment of Roseanne Pawelec to Administrator VI (Director of Public Relations). Supporting documentation of the appointee's qualifications accompanied the recommendation. After consideration of the appointee's qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Commissioner of Public Health, under the authority of the Massachusetts General Laws, Chapter 17, Section 6 the appointment of Roseanne Pawelec to Administrator VI (Director of Public Relations) be approved.

In a memorandum dated July 14, 1999, Howard K. Koh, Commissioner, Department of Public Health, recommended approval of the appointment of Felipe Rocha to Program Manager VIII (Deputy Director, AIDS Bureau). Supporting documentation of the appointee's qualifications accompanied the recommendation. After consideration of the appointee's qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Commissioner of Public Health, under the authority of the Massachusetts General Laws, Chapter 17, Section 6 the appointment of Felipe Rocha to Program Manager VIII (Deputy Director, AIDS Bureau) be approved.

In a memorandum dated July 14, 1999, Howard K. Koh, Commissioner, Department of Public Health, recommended approval of the appointment of Letitia Davis to Program Manager VI (Director, Occupational Health Surveillance Program). Supporting documentation of the appointee's qualifications accompanied the recommendation. After consideration of the appointee's qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Commissioner of Public Health, under the authority of the Massachusetts General Laws, Chapter 17, Section 6 the appointment of Letitia Davis to Program Manager VI (Director, Occupational Health Surveillance Program) be approved.

In a letter dated August 6, 1999, Blake Molleur, Executive Director, Western Massachusetts Hospital, recommended approval of a re-appointment to the consultant medical staff of Western Massachusetts Hospital, Westfield. Supporting documentation of the appointee's qualifications accompanied the recommendation. After consideration of the appointee's qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Executive Director of Western Massachusetts Hospital, under the authority of the Massachusetts General Laws, Chapter 17, Section 6 the following re-appointment to the consultant medical staff of Western Massachusetts Hospital be approved:

<u>APPOINTMENT</u>	<u>RESPONSIBILITY</u>	<u>MEDICAL LICENSE NO.</u>
Stanley F. Glazer, M.D.	Dermatology	35736

In letters dated August 4 and August 5, 1999, Katherine Domoto, M.D., Associate Executive Director for Medicine, Tewksbury Hospital, Tewksbury, recommended approval of an appointment and re-appointments of physicians to the active, affiliate, allied and consultant medical staffs of Tewksbury Hospital. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Associate Executive Director for Medicine of Tewksbury Hospital, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the following appointment/re-appointments to the active, affiliate, allied, and consultant medical staffs of Tewksbury Hospital be approved for a period of two years beginning August 1, 1999 to August 1, 2001:

<u>APPOINTMENT</u>	<u>STATUS/SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
--------------------	-------------------------	--------------------------------

Ralph Saintfort, M.D.	Provisional Affiliate/Psychiatry	158469
-----------------------	-------------------------------------	--------

**RE-APPOINTMENTS**

John Athas, M.D.	Active/Internal Medicine	49565
Guillermo Walters, M.D.	Consultant/Radiology	74558
Christopher Huvos, PsyD	Allied Staff Psychology	3614
Charles Pu, M.D.	Affiliate/Internal Medicine	73771

In a letter dated August 9, 1999, Robert D. Wakefield, Jr., Executive Director, Lemuel Shattuck Hospital, recommended approval of the appointments and re-appointments to the medical staff of Lemuel Shattuck Hospital, Jamaica Plain. Supporting documentation of the appointees' qualifications accompanied the recommendation. After consideration of the appointees' qualifications, upon motion made and duly seconded, it was voted (unanimously): That, in accordance with the recommendation of the Executive Director of Lemuel Shattuck Hospital, under the authority of the Massachusetts General Laws, Chapter 17, Section 6, the following appointments and re-appointments to the medical staff of Lemuel Shattuck Hospital be approved:

<u>APPOINTMENTS</u>	<u>STATUS/SPECIALTY</u>	<u>MEDICAL LICENSE NO.</u>
---------------------	-------------------------	--------------------------------

Gina Terenzi, D.M.D.	Consultant/Dentistry	18400
Patricia Clifford, PA-C	Orthopedics	211
Rocco LoRicco, PA-C	Surgery	78973

**RE-APPOINTMENTS:**

Melinda Armacost, D.M.D.	Active/Dentistry	17887
Tai Chung, M.D.	Active/Nephrology	34685
David Cottrel, D.M.D.	Active/Dentistry	18089
Annekathryn Goodman, M.D.	Gynecology	53787
Norman Grace, D.M.D.	Consultant/ Gastroenterology	28355
Roger Graham, M.D.	Consultant/Surgery	70380
Richard Miller, D.M.D.	Consultant/Dentistry	14060
Elizabeth Oates, D.M.D.	Consultant/Radiology	55284
Ewa Preneta, M.D.	Active/Gastroenterology	80259

Marie Turner, M.D.	Active/Pulmonary	45947
Gary Warrington, D.M.D.	Consultant/Dentistry	15086

**STAFF PRESENTATION: “DISCUSSION OF USE OF STATE SANITARY CODE TO RESTRICT SMOKING IN RESTAURANTS”**

Dr. Gregory Connolly, Director, Massachusetts Tobacco Control Program and Attorney Howard Saxner, Deputy General Counsel, presented information on the use of the State Sanitary Code to restrict smoking in Massachusetts’ Restaurants.

Dr. Connolly and Atty. Saxner noted that at its April meeting, the Public Health Council was presented with a report by the Medical Foundation on reducing the effects of environmental tobacco smoke (ETS) in Massachusetts. The report contained numerous recommendations for reducing the risk of exposure to environmental tobacco smoke (ETS). Following the presentation, the Public Health Council requested Department Staff to consider the recommendations and report back to the Council on the feasibility and desirability of implementing the recommendations. One key recommendation was that the Department consider using the Minimum Sanitation Standards for Food Service Establishments (part of the State Sanitary Code) to establish a state-wide ban on smoking in restaurants. Specifically, the report cites the current code requirements for food service establishments, 105 CMR 590.000, which prohibit all poisonous or toxic materials except those necessary for maintenance of the restaurant. According to the report, it might be possible to regard tobacco smoke as a poisonous or toxic material under the regulations and therefore subject to the existing prohibition in the code.

Staff continued, “In the opinion of the Department’s Legal Office, action based upon an interpretation of existing regulations is likely to give rise to a serious legal challenge. The regulation banning poisonous and toxic materials has been around for many years (since at least 1971) without giving rise to the proposed interpretation, and obviously would have a significant impact on the public. As a consequence, the use of an interpretive guideline appears to leave the Department open to an argument that its action conflicts with the intent of M.G.L.c.30A, ss2 and 3, which establish procedures for public input on rules and regulations proposed by state agencies. A regulation is defined in M.G.L.c.30A, s.1 as ‘including any standard or requirement of general application and future effect.’ As an alternative, the Legal Office found that the Department appeared to have sufficient authority under the State Sanitary Code, M.G.L.c.111,s.127A, to ban smoking in restaurants through a formal amendment to the regulations implementing the State Sanitary code, at 105 CMR 590.000. Section 127A provides that the sanitary code regulations “shall deal with matters affecting the health and well-being of the public in the commonwealth in subjects over which the department takes cognizance and responsibility...” In addition, the Department is given explicit authority to establish sanitation standards for food service establishments, which has been relied upon by the Department to establish regulations restricting smoking in food preparation areas (105 CMR 590.011) and requiring the posting of signs prohibiting the sale of tobacco products to minors (105 CMR 590.001).”

Staff further said, “Apart from the legal issues, staff has carefully studied the administrative issues associated with using the State Sanitary Code to restrict smoking in restaurants. Presently, the Department’s efforts to reduce exposure to ETS are focused at the local level through funding and support of local boards of health and coalitions to pass and enforce local regulations and ordinances to restrict smoking in such public areas as work sites and restaurants. The campaign has achieved impressive results despite organized opposition by the tobacco industry and restaurant groups. In the period since 1993, the proportion of the Massachusetts population residing in communities that have banned smoking in restaurants has increased from 7 percent (8 communities) to almost 40 percent (78 communities). In this same period, the population covered by laws that restrict, but do not ban smoking in restaurants has increased from 13 percent (15 communities) to 28 percent (69 communities). This means that, overall, 68 percent of the state’s population is covered by local regulations and ordinances which exceed minimum state statutory standards. At present, an additional 15 cities and towns, with a population of about 400,000 people, are actively considering smoking bans in restaurants.”

In addition, staff noted, “in regard to a number of other recommendations in the Medical Foundation Report, including proposals to protect those under state care and state employees from the dangers of second hand smoke, to prohibit smoking in state run residences and in state vehicles, and to adjust insurance rates to reflect the extra costs incurred by involuntary exposure to ETS, Department staff believes that many of these proposals have merit, and intends to carefully consider options for implementation, including consulting with other state agencies that have authority to act upon these recommendations.”

In conclusion, staff said, “The local debate surrounding adoption of an ordinance or regulation educates the public about the dangers of environmental tobacco smoke and empowers communities to enforce the laws once they are passed. Based on the successes achieved at the local level, Department staff recommends that the Department not amend its regulations to ban smoking in restaurants on a state-wide basis at this time. Staff also recommends that the Department expand its media campaign on the dangers of ETS and increase local efforts to support initiatives to reduce exposure to ETS. In addition, this issue should be revisited in a year and our approach reevaluated at that time.”

Dr. David Rosenthal, Chair of Massachusetts Coalition of Healthy Future, Professor of Medicine, Harvard Medical School and Past President of the Cancer Society addressed the Council on behalf of the Chair of the Coalition, James Hyde. Dr. Rosenthal said in part, “The coalition presented you with the task force report. The Task Force report, which you received on April 27, 1999, provides a very clear and concise review of the mounting evidence implicating environmental tobacco smoke. Exposure is a major cause of premature morbidity and mortality for the citizens of the Commonwealth of Massachusetts. There are people dying from lung diseases, allergies, asthma, and cancer from environmental tobacco smoke, and it is a serious threat to our public health. In the report, the Task Force chose to highlight some recommendations that it felt the Commonwealth should consider in coming to terms with the adverse human health effects of ETS. One of those areas dealt with the use of the State Sanitary Code as has been mentioned, as a mechanism to provide immediate protection to restaurant owners, patrons and workers at risk from involuntary exposure to sidestream smoke. The Task

Force did recommend that the Sanitary Code be seriously reviewed as a possible vehicle for protecting citizens from involuntary exposure in restaurants and also in public housing. The report went on to say that the Task Force does not suggest that the Sanitary Code be amended but rather that it be applied as it is written to reduce involuntary exposure to ETS. It our understanding now from the testimony that we have just heard that after careful review of the applicable sections of the State Sanitary Code and sections of the Massachusetts General Laws, that relate to the procedures for amending rules and regulations, that the Department does not feel that this approach is possible without seeking a formal amendment to the Code. In their testimony Dr. Connolly and Atty. Saxner point with pride to describe what we have just seen on the local community level, clearly major successes. Use of the State Sanitary Code, however, could have extended these productive numbers to everyone. We appreciate the fact that this is an area full of complexities, full of nuances, and is not without certain unintended adverse consequences.”

“Further,” continued, Dr. Rosenthal, “we welcome the Department’s suggestion that this issue be revisited in a year and the approach re-evaluated at that time. However, we would also suggest that during this interval, if that is the decision of the Public Health Council, that the Department should undertake a careful analysis of the legal and policy implications of the use of the State Sanitary Code to protect employees and patrons of restaurants and bars. In the interim, the Task Force believes that the Department should turn its attention to the other recommendations that you can find within the Task Force report. As the lead agency of the state government charged with protecting and promoting the health of the citizens of the Commonwealth, the Department has a firmative obligation to advocate for extension of protection to those individuals who both work within and are served by sister agencies of state government. The Task Force Report cites several examples, in which the state government does not always pursue policies internally that it advocates externally. The Department of Public Health should take steps to exercise its leadership in these areas and work with sister agencies to address these serious gaps, and I would be happy to discuss that further with this committee...”

In conclusion, Dr. Rosenthal stated, “There are those who continue to suggest that environmental tobacco smoke is just at most an annoyance. Yet the research that you have in front of you, reviewed in the Task Force Report, suggests that environmental tobacco smoke exposure is a serious and preventable threat to the public health. It is clear that it will take more than education, more than public service announcements, more than just pamphlets to reduce involuntary exposure to the toxic substances contained in ETS. Certainly the education, the PSAs, and the pamphlets have done a great deal but there is more to be done. The Department can, and should use all of the resources and assets at its disposal to see that everyone is afforded the most basic protection to the air that they breath. The Task Force report provides an exquisitely clear roadmap, and we hope that the Department of Public Health will commit itself to follow it.”

Chairman Koh, said in part, “It is fitting that we are discussing this issue as the century closes because the health effects of tobacco addiction that we have witnessed this century have been a public health disaster. I think medical historians will recall this century as the tobacco and cancer century, where we are seeing lung cancer, which used to be a very rare cancer, now being the

number one killer in men and women. In my view as a physician and a Commissioner, when we look at the devastation caused by tobacco we have been asked to accept the unacceptable and tolerate the intolerable. So discussion like this at the end of the century is very valuable for all of us and I would like society to make a broader commitment toward eliminating this addiction in the next century...The discussion about the possible use of the State Sanitary Code I think has been very healthy and educational. I, too, am very proud of what has been done at the local level. Because of the work of people in communities across the state, we have made tremendous progress and now protecting some two-thirds of the state's population with respect to smoking in restaurants. We need to do more and we need to make it enduring and lasting. I think the way we are going at the local level we are harnessing the moral outrage and as Commissioner, I would pledge to travel to every corner of the state and discuss this issue before local boards of health and any other group that wants to hear me speak on it. To me this is my highest priority, my highest prevention priority as Commissioner. I look forward to keeping this issue alive throughout this Fall and into the next century. I am very proud to announce that our Department will continue to keep up counter advertising on radio, TV, and billboards about the issue of environmental tobacco smoke. And as Dr. Connolly has mentioned, we continue to strongly fund local boards of health on this issue and will continue to do so."

"In summary," Dr. Koh said, "I believe that this has been a very healthy constructive discussion. We want to keep this issue alive. I will personally pledge to revisit this issue in a year to see the progress that has been made. I personally will not stop until we have a goal reached of crystal clear air for people in Massachusetts to breath..."

After consideration, upon motion made and duly seconded, it was voted (unanimously) to accept staff recommendation and strategies on the above matter (in the **Use of the State Sanitary Code to Restrict Smoking in Restaurants**), of continuing their current strategies and revisiting the issue in one year.

Dr. Koh thanked Dr. Rosenthal for the excellent report on environmental tobacco smoke and said he would like to follow one of the recommendations which is to set-up an interagency task force within government to see how environmental tobacco smoke is affecting the people we serve as government officials. Council Member Sherman recommended that a member of the legislature be asked to serve on the interagency task force.

### **FINAL REGULATION:**

**REQUEST FOR FINAL PROMULGATION OF AMENDMENT TO DETERMINATION OF NEED REGULATIONS 105 CMR 100.000 GOVERNING MANDATORY TERMS AND CONDITIONS FOR FINAL CAPITAL COSTS ADJUSTMENTS:**

Ms. Joyce James, Director, Determination of Need Program, presented the DoN regulations 105 CMR 100.000 to the Council. She said in part, "...The original amendment prohibited any adjustments to final costs of convalescent or nursing homes, rest homes and hospital projects after they have been licensed. A public hearing on the initially proposed amendment was held and based on the testimony and comments submitted on the amendment, staff became concerned that the initially proposed amendment would create financial hardships on facilities. During the construction and licensure process, a provider is rarely able to determine the total cost of a project because unforeseen circumstances add costs and also take additional time to be resolved. In responding to these concerns, staff finds that it is reasonable to allow providers a certain amount of time after a facility has been licensed to allow them to collect all of the relevant documents, resolve all the pending issues, and pay their bills before they submit requests for final cost adjustments. With that in mind, staff revised the original proposed amendment to allow healthcare facilities to submit adjustments to final costs twelve months beyond initial licensure of the facility or opening of the service." It was noted that providers are still required to submit to the DoN program final costs following final plan approval by the Department's Division of Health Care Quality.

After consideration, upon motion made and duly seconded, it was voted: (unanimously) that the **Request for Final Promulgation of Amendment to Determination of Need Regulations 105 CMR 100.000 Governing Mandatory Terms and Conditions for Final Capital Costs Adjustments** be approved; that a copy be forwarded to the Secretary of the Commonwealth and that a copy be attached and made a part of this record as **Exhibit No. 14,658**. The approved language follows:

105 CMR 100.000 is amended by adding "7" to subsection 100.551(I)

**105 CMR 100.551: Mandatory Terms and Conditions**

(I)(7) no additional increases in the maximum capital expenditure, inflationary or otherwise, shall be approved for convalescent, nursing, rest home, clinic or hospital projects beyond twelve (12) months after the initial licensure of beds and opening of the facility or service.

**PROPOSED REGULATIONS:**

**INFORMATIONAL BRIEFING ON PROPOSED AMENDMENTS TO REGULATIONS GOVERNING THE LICENSURE OF LONG TERM CARE FACILITIES: 105 CMR 150.000 AND GENERAL STANDARDS OF CONSTRUCTION FOR LONG TERM CARE FACILITIES: 105 CMR 151.000 CONCERNING THE PROVISION OF AIR CONDITIONING IN LONG TERM CARE FACILITIES:**



Dr. Paul Dreyer, Director, Division of Health Care Quality, presented the regulations relative to air-conditioning in Long Term Care Facilities. Staff noted, “Current long term care regulations – both state licensure regulations and federal certification regulations - are silent regarding the provision of air conditioning during the summer months. Staff conducted a recent survey of licensed nursing and rest homes and found that 90% of nursing homes and 50% of rest homes provide air conditioning in at least some common areas. An analysis of facilities newly constructed in the last ten years found that virtually all were built with central air conditioning. Experience with heat waves this summer has led us to conclude that in order to protect the health and safety of residents, all facilities should provide air conditioning in at least the common areas.”

In conclusion, staff said, “The proposed regulations require that all facilities provide air conditioning in dining rooms, activity rooms, nursing unit corridors, and other common areas sufficient to maintain a maximum temperature of 75 degrees in those areas during the summer months. The regulation requires facilities to come into compliance with this standard by June 1, 2000. The regulations also require newly constructed facilities or facilities undergoing major renovations to include air conditioning systems throughout the newly constructed or renovated areas. Staff will return to the Public Health Council for promulgation of these regulations with appropriate amendments following a public hearing.”

#### **NO VOTE/INFORMATION ONLY**

#### **DETERMINATION OF NEED:**

#### **COMPLIANCE MEMORANDUM: PREVIOUSLY APPROVED DoN PROJECT NO. 2-3956 OF HEALTHALLIANCE HOSPITALS, INC. - PROGRESS REPORT:**

Mr. Jere Page, Senior Analyst, Determination of Need Program, presented the progress report Compliance Memorandum for Project No. 2-3956 of HealthAlliance Hospitals, Inc. He said, “...This is the second progress report we have submitted to the Council. The first was presented this past March and HealthAlliance was found to be in substantial compliance with seven of the eleven conditions and in partial compliance with the remaining four conditions. In this second report, in consultation with other Department staff, it has been determined that HealthAlliance is now in substantial compliance with all eleven conditions. These conditions involve statutory free care, emergency services at the Burbank campus, regional emergency medical services, financial investment in the Burbank Campus governance, non-emergency transportation, free care services, interpretive services, mental health services, education and outreach and outpatient services at Burbank Campus. We should note that HealthAlliance and the Northern Healthcare Coalition should be commended for their efforts to work together to meet these specific requirements of the conditions. However, we believe that additional time is required to achieve full compliance with all the conditions. Therefore, HealthAlliance has agreed to come back to the Council in nine months, that is May of next year, with a further update on the compliance with the conditions.”

Dr. Jonathan H. Robbins, CEO of Central New England HealthAlliance, accompanied by William Rosen, Vice President for Government Relations at UMASS Memorial Healthcare and Jill Lyons,

Director of Ambulatory Care Services at HealthAlliance reported on the progress of the conditions as follows:

**NOTE: The four conditions which require further compliance are in bold print.**

- 1) Statutory Free Care: HealthAlliance continues to provide free care as required by regulation. At the same time our successful efforts to enroll more patients in MassHealth are beginning to reduce the number of free care cases presenting to our facilities. After hiring an external firm to maximize the effort, we enrolled 114 patients as new MassHealth beneficiaries in fiscal year 98 and project to enroll another 156 in the coming fiscal year. We have seen a corresponding increase of 25% in MassHealth discharges in the last year and a 40% increase in MassHealth outpatient charges...The booming economy and low unemployment rate appear to be affecting these numbers as well.
- 2) Emergency Services: The special project waiver for satellite emergency services at Burbank Campus is scheduled to end soon. We will be seeking an extension of that authorization. HealthAlliance will continue to provide quarterly reports on ER utilization at our campuses during the extension and will continue to consult with the Northern Healthcare Coalition and others to insure that these services are meeting the needs of our communities. We also intend to continue our advertising and outreach to the public and to inform them of availability of emergency services at the Burbank Campus.
- 3) **Regional Emergency Medical Services:** HealthAlliance management continues to meet with the Emergency Medical Services Regional Committee. One of the regularly scheduled agenda items is a review of the availability of emergency services at the Burbank Campus. In addition, ambulance run sheets are also reviewed on a monthly basis. Any questionable or inappropriate EMS decisions are reviewed with the area providers. The ALS vehicle originally housed at the Burbank Campus has again returned to that campus during the warm months. HealthAlliance has developed three options for the construction of a permanent ambulance bay at Burbank. However, upon review by HealthAlliance management it was decided that all three options were too costly at the present time and we are in lease negotiations with a neighboring facility to house that ambulance.
- 4) Capital Contribution: We will probably come in around 9 to 10 million dollars upon completion of our cancer center and will exceed that condition greatly.
- 5) Governance: We have appointed a diverse and talented board. We are committed to having it reflect the diversity of our service area. We will continue to seek input from the community regarding the make-up of our boards and committees.
- 6) **Non-Emergency Transportation:** We recognize our responsibility to work with our community to develop solutions to pressing transportation problems. To that end, HealthAlliance, in collaboration with the Northern Healthcare Coalition and the Montachusett Regional Transit Authority, held a meeting on June 2 with community groups to discuss non-emergency transportation options. The agencies represented in this meeting

are engaged in various efforts to survey the needs, publicize resources, and develop alternatives to existing transportation. We have agreed to join efforts and we will meet again in September.

- 7) **Free Care Services:** We continue to develop the Gateway Health Access Program (GAP) in partnership with Hayward Hospital and the Montachusets Opportunity Council. A consultant has been hired to write grant requests for the program. In addition we are in the process of hiring a full-time coordinator who will work with uninsured clients who live or work in the service areas of HealthAlliance and Hayward, helping them to obtain access to healthcare resources including MassHealth.
- 8) **Interpreter Services:** HealthAlliance is adopting an action plan to improve its capacity to serve non-English speaking patients and their families. The action plan was developed in coordination with UMASS Memorial. The Office of Refugee and Immigrant Health was consulted during the development of the plan and HealthAlliance also benefited from information gained during regular meetings of a committee set-up to evaluate interpreter programs and outreach to minority communities. The elements of the action plan are as follows: (a) Appoint a trained interpreter to serve as interim coordinator for the HealthAlliance system, (b) Implement a series of mandatory training sessions for all HealthAlliance sites, for all staff and providers. The sessions will be held for each of the three shifts and will begin this month, (c) Develop brochures which will market this new service: one for providers, one for patients, and community, (d) Identify the community agencies which represent the targeted non-English speaking populations for the purpose of doing a needs assessment to identify what outreach activities need to occur. Meetings with community agencies will be attended by appropriate personnel from both HealthAlliance and UMASS Memorial. After the meetings, an action plan will be developed outlining specific outreach activities specified by the community, (e) Revise the job description for interpreters to reflect outreach activities, (f) Develop a health data collection system that helps identify the ethnic groups and languages served. Based on the information we will develop a cadre of qualified interpreters with an emphasis on providing coverage after hours. We are confident that with this plan in place our non-English speaking patients will feel welcomed and find it easy to access services at our facility.
- 9) **Mental Health:** HealthAlliance is committed to using its best efforts to obtain a Medicaid contract for the Burbank inpatient psychiatric unit and to improve the coordination of mental health services. UMASS Memorial has had informal discussions with the Massachusetts Behavioral Health Partnership. The message received from them was that they were not receptive to amending the present Medicaid contract for HealthAlliance or for any other Massachusetts hospital. HealthAlliance and UMASS Memorial decided the optimum strategy would be to improve our services in the region and strengthen our bid for the next round of Medicaid contracts anticipated this Fall with the award announcements for January. HealthAlliance therefore has contracted the management of mental health services to UMASS Memorial. The inpatient unit is presently under the management of Ann Smith who is a UMASS Memorial Nurse Manager and starting next month, Dr. John Ainy of UMASS Memorial will become the new medical director. HealthAlliance is also actively recruiting

another psychiatrist to expand its outpatient services. The strengthening of the management of the inpatient unit was a factor in HealthAlliance recently being awarded a contract with Harvard Pilgrim. Other clinical services have been improved in anticipation of the next Medicaid contract process. A much stronger link has been established between the Herbert Lipton Center's emergency team and the Burbank inpatient unit. This has resulted in short term inpatient care being provided in a local setting for emergency cases. HealthAlliance expects to propose this short term track to the Behavioral Health Partnership as a pilot program. This pilot program hopefully will also assist HealthAlliance in getting access to Medicaid patients. Under UMass Memorial's management, HealthAlliance has become part of an integrated system of care for general health and mental health. HealthAlliance believes that these actions will enhance its ability to compete for the next Medicaid contract for inpatient services.

"In conclusion", Dr. Robbins said, "I would like to state that HealthAlliance remains committed to the goals of increasing access to health services especially for underserved persons, maintaining the Burbank Campus as the site of a variety of medical programs and joining efforts with others in our community to fulfill our social mission. We have benefited greatly from the input of the Northern Healthcare Coalition in this process and will continue to work with them."

Council Member Yaffe noted that he was very impressed with both the staff and applicant and the Northern Healthcare Coalition for taken the conditions seriously and following through on them. "I'm impressed with the process", he said, "I hope it will continue in the future as far as the condition monitoring."

Attorney Clare D. McGorrian of Health Law Advocates, representing the Northern Healthcare Coalition stated briefly, "I would just like to point out we have submitted a report and comments on HealthAlliance's compliance and we do think there has been substantial progress and we do appreciate their efforts. But the Coalition really deserves tremendous credit and I don't give it to myself, but to them, for keeping HealthAlliance on track. I thank Mr. Yaffe for his comments, but the Coalition is a big part of why the compliance with the conditions has moved forward and is so successful."

Ms. Kathy Sicard, Chairman, Northern Healthcare Coalition, addressed the Council. She stated, "...We agree that HealthAlliance has substantially complied with most of the conditions and for this we are thankful. We believe that HealthAlliance and the Coalition, with the assistance of the Department of Public Health Staff and Health Law Advocates, have developed the most meaningful lines of communication to date. We look forward to the timely resolution of these conditions we now address." Ms. Sicard made the following suggestions for some of the conditions:

1. Statutory Free Care: We suggest more complete data be submitted to substantiate the projected decrease of need of free care. We suggest that HealthAlliance continue to report on the enrollment of Mass. Health Recipients. We recommend HealthAlliance

continue to educate the service area regarding the availability of Mass. Health.

2. Emergency Services: We agree progress had been made regarding the availability of emergency services at both the Burbank and Leominster Campus. We stress the need for continuing public and staff education of emergency services available on the Burbank Campus. We are not aware of any educational news article run by HealthAlliance over the past several months. We believe that greater utilization of the Burbank Emergency Department will result in relieving some of the burdens the Leominster Emergency Department is experiencing. We also note the renovations at Leominster referred to in the report consist more of a new emergency department that is being built rather than renovations of the existing emergency department. This will not be completed for perhaps another year to a year and a half. We strongly support the request by HealthAlliance for an extension of the satellite emergency services on the Burbank Campus and also strongly support the recommendation by DPH Staff to continue the quality reports through this period.
3. EMS Services: We fail to understand the year long delay in providing the ambulance bay as called for in this condition. Fall and winter will soon be upon us and we feel this condition must be met immediately as the ambulance must be housed in a heated facility. While we do not agree that the proposed site for the ambulance is immediately adjacent to the Burbank Campus, we do not oppose the site. We agree the location is well suited to serve Fitchburg and the northern tier communities. We request that HealthAlliance report to DPH and the Coalition on the status of the ambulance bay in October, 1999 to insure that we do not encounter the situation that we faced last fall and winter.
11. Outpatient services at Burbank Campus: We are thankful for the progress towards the cancer center and anxiously await the construction phase to begin that will make this a reality. We urge HealthAlliance to begin this as soon as possible as the upgrading of many of the outpatient services that are so necessary to the survival of the Burbank Campus will coincide with this project. We also ask for the expected date of completion of the facilities study. It is our understanding that these recommendations will be shared with the Northern Healthcare Coalition and they also will have a huge impact on the viability of the Burbank Campus.

“In conclusion,” Chairman Koh, summarized, “...It sounds like there is consensus that we have made substantial progress on the eleven conditions that have been put forward – substantial progress with seven of the eleven conditions and partial progress on four of the conditions. There is good communication among all the parties involved. There is a lot of progress to be grateful for. There are a number of issues still outstanding. The one most pressing that you have identified has been the ambulance service and ambulance bay for which you ask a report in two months instead of nine.” The applicant agreed to report to DoN staff in October on the ambulance service and ambulance bay. Ms. Sicard replied, “We agree. We don’t request a formal notation or anything.”

After consideration, upon motion made and duly seconded, it was voted (unanimously): to approve Staff's recommendation that **HealthAlliance Hospitals, Inc.** come back to the Public Health Council in nine months (May 2000) with a progress report on the fully implemented conditions of approved **DoN Project No. 2-3956** and that Staff be directed to report its findings to the Council.

**ALTERNATE PROCESS FOR TRANSFER OF OWNERSHIP APPLICATIONS:  
PROJECT APPLICATION NO. 1-4873 OF HAMPDEN GYNECOLOGICAL  
ASSOCIATES, INC.; AND PROJECT APPLICATION NO. 1-4877 OF PLANNED  
PARENTHOOD LEAGUE OF MASSACHUSETTS, INC.:**

Ms. Holly Phelps, Consulting Analyst, Determination of Need Program presented the two transfer of ownership applications to the Council. She said, "The first project No. 1-4373 formalizes the transfer of ownership between Hampden County Gynecologists and Obstetricians, Inc. and Hampden County Gynecological Associates, Inc. that occurred in 1989, and your approval of that project would allow the transfer of ownership now to pass from Hampden Gynecological Associates to Planned Parenthood League of Massachusetts, Inc., which is the second project. There were no comments received on either project. Staff found that both projects met the standards set forth in the alternate process for transfer of ownership of hospitals and ambulatory surgery centers, and we are recommending approval of both projects. Since there were no comments received yesterday by close of business, the condition that applied to the Planned Parenthood application doesn't really apply now, so we are recommending approval of both projects without conditions...."

Staff noted that Hampden Gynecological Associates, Inc. (HGA), is seeking Determination of Need for transfer of ownership and original licensure of Hampden Gynecological Associates, a freestanding ambulatory surgery center. The transfer of ownership occurred in July, 1989 when HGA acquired substantially all of the assets of Hampden County Gynecologists and Obstetricians, Inc. The Applicant states that it was unaware of the regulatory requirements of such a transfer and, thus, the necessary technical filings were not submitted. HGA is and will continue to be the sole manager and the licensee of the Center. No change in services and no capital expenditure occurred or is anticipated in connection with this transfer of ownership.

Staff noted that Planned Parenthood League of Massachusetts, Inc. (PPLM), is seeking Determination of Need for transfer of ownership and original licensure of Hampden Gynecological Associates, a freestanding ambulatory surgery center, resulting from the acquisition of substantially all of the assets of Hampden Gynecological Associates, Inc. by PPLM. PPLM will be the sole manager and the licensee of the Center. No change in services and no capital expenditure is anticipated in connection with this transfer of ownership.

Staff found that both applicants HGA and PPLM satisfy the requirements for the Alternate Process for Change of Ownership found in 105 CMR 100.600 et seq and the standards applied under 105 CMR 100.602 as follows:

- A. Individuals residing in the ambulatory surgery centers' health systems area or primary service area comprise a majority of the individuals responsible for decisions concerning:
1. approval of borrowings in excess of \$500,000;
  2. additions or conversions which constitute substantial change in services;
  3. approval of capital and operating budgets; and
  4. approval of the filing of an application for Determination of Need.
- B. The Division of Medical Assistance (DMA) did not submit any comments on the applications.
- C. The Department has determined that the Applicants, freestanding ambulatory surgery centers, are not subject to a condition of approval to maintain or increase the percentage of gross patient service revenue allocated to free care as defined at M.G.L.c.118G or its successor statute covering uncompensated care, as existed prior to the transfer of ownership.
- D. The Division of Health Care Quality has confirmed that the Applicants are licensed facilities.

After consideration, upon motion made and duly seconded, it was voted (unanimously): that **Project Application No. 1-4873 of Hampden Gynecological Associates, Inc.** Request for transfer of ownership and original licensure, resulting from acquisition of substantially all of the assets and liabilities of Hampden County Gynecologists and Obstetricians, Inc. by Hampden Gynecologists Associates, Inc., be approved, based on staff findings.

After consideration upon motion made and duly seconded, it was voted (unanimously): that **Project Application No. 1-4877 of Planned Parenthood League of Massachusetts, Inc.** Request for transfer of ownership and original licensure of Hampden Gynecological Associates, resulting from acquisition of substantially all of the assets and liabilities of Hampden Gynecological Associates, Inc. by Planned Parenthood League of Massachusetts, Inc., be approved, based on staff findings.

\*\*\*\*\*

The meeting adjourned at 11:20 A.M.

LMH

---

Howard K. Koh, M.D., M.P.H.  
Chairman

**MINUTES OF THE PUBLIC HEALTH COUNCIL  
MEETING OF AUGUST 17, 1999  
MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH**